

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request by Application for a continued examination under 37 CFR 1.114 was filed in this application after final rejection. Since the application was eligible for continued examination under 37 CFR 1.114 and the fee set was timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 27, 2008 has been entered.

### ***Claim Rejections – 35 USC § 103***

The Examiner stated that claims 1-5, 7-10, 12, 16-24, 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., (US Patent 6,567,787) in view of Rongley (US Patent 5,785,322).

The Examiner stated that claims 6, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., (US Patent 6,567,787), in view of Surace et al. (US Patent 6,144,938).

The Examiner stated that claims 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., (US Patent 6,567,787), in view of Avi (US Patent 5,666,157).

First, in regard to claims 1, 23, 48 and 49, the Examiner states on pages 3-4 of the Office Action dated 10/30/08 that "Applicant argues that Walker et al. ("Walker"), does not specifically teach an automatic screen recognition component having a confidence level threshold *including supplying audio files in real time of at least one voice interaction and/or recording the at least one voice interaction and supplying the files to the automatic speech recognition component. The examiner agrees ..*" On page 5, the Examiner in his argument states "Rongley teaches that the system has an upper and a lower threshold for comparison to the confidence level determined for a vocabulary word match for a captured utterance. If the confidence level for a particular match is above the upper threshold, the utterance is accepted. If it is between the two thresholds,

the system prompts the speaker to either to repeat the utterance or asks if the vocabulary word with the highest confidence level was intended. If the confidence level is below the lower threshold, the utterance is ignored. Therefore, it *would have been obvious to one of ...to use* confidence level as taught by Rongley in Walker because it would increase the speed and accuracy of the voice recognition.

First, the Examiner did not deal with the rest of the portion of the claim element *"including supplying audio files in real time of at least one voice interaction and/or recording the at least one voice interaction and supplying the files to the automatic speech recognition component."* Thus, the claims are not obvious under this analysis. *Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole.* See MPEP § 2111 - § 2116.01 for case law pertaining to claim interpretation. The Examiner is not looking at the claimed invention as a whole, but rather distilling the invention down to a gist or thrust of the invention and completely disregarding the "as a whole requirement." See MPEP § 2111. Again the Examiner is trying to distill the invention down to a "gist" or "thrust" disregarding the "as a whole" requirement.

*Second, "confidence level" can have many meanings in the art.* As it is stated above and in Rongley, it has a different meaning than in Applicant's invention. For example, in regards to approximate confidence intervals for non-standard applications it is sometimes not possible to find rules for constructing confidence intervals that have exactly the required properties. But practically useful intervals can still be found.

In contrast, a Bayesian interval estimate is sometimes called a credible interval. Using much of the same notation as approximate confidence intervals. The definition of a credible interval involves probabilities calculated from the distribution of  $\Theta$  conditional on the observed values of  $X=x$  and marginalised (or averaged) over the values of  $\Phi$ , where this last quantity is the random variable corresponding to the uncertainty about the nuisance parameters in  $\phi$ . Note that the treatment of the nuisance parameters above is often omitted from discussions comparing confidence and credible intervals but it is markedly different between the two cases. In some simple standard cases, the intervals produced as confidence and credible intervals from the same

data set can be identical. They are always very different if moderate or strong prior information is included in the Bayesian analysis. Thus, these two definitions are very different as one the latter is the definition used in Rongley. As Applicant's invention is comparing the voice interaction record with the ASR text, while confidence level thresholds are used in evaluating the match accuracy, they are not necessarily factoring in a nuisance value, i.e. Rongley. Moreover, as previously stated, Walker teaches away from this in Col. 7, lines 61-65, stating "[t]he POS terminal provided in accordance with the present invention may also be used to record and determine what words were spoken by other parties such as customers. Such words and phrases may be stored and analyzed to extract desirable information therefrom." A prior art reference must be considered in its entirety including portions that would lead away from the claimed invention. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F 2d 1540, 220 USPQ 303 (Fed Cir. 1983) *cert. denied*, 469 U.S. 851 (1984). Applicants claimed invention relates ONLY to whether the agent followed the script properly and as stated above, Walker if combined with Rongley would necessarily have to involve using the latter definition of confidence levels as it would again necessarily have to filter out (due to the public environment in which the interaction takes place) the nuisance values. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in KSR).

As stated earlier, Applicant respectfully disagrees as *Walker is silent on providing second scores related to an overall compliance with the at least one voice interaction and does not suggest that such a second score could be determined. Further, Rongley does not disclose applicant's claimed invention, i.e. "having a confidence level threshold including supplying audio files in real time of least one voice interaction and/or recording the at least one voice interaction and supplying the files to the automatic speech recognition component."* The examiner is using references that *should not* be combined in order to distill the invention to a gist or thrust of the invention. "In the instant case, we conclude that a person of ordinary skill in the art *having common sense at the time of the invention would not have reasonably looked to Walker or Rongley to solve a problem already solved by Applicant.*" Ex Parte Rinkevich et al,

Appeal 20071317, decided May 29, 2007. Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) (Emphasis added).

Third, just because a reference mentions a term used in an Applicant's invention *does not make that reference prior art to the Applicant's invention*. The Examiner, in this case, seems to think that any mention or suggestion of any term in a patent makes that patent prior art whether the patent is relevant at all. Rongley and Walker are relevant to each other – neither are relevant to Applicant's invention. The examiner seems to think that (as both patents say in part) "capturing an utterance" is relevant to Applicant's claims which involve highly a technical method, system and apparatus for conducting a voice interaction between an agent and a client, *wherein the agent is reading a script – NOT uttering a word, not asking a question a POS terminal*. This is the law, i.e., Office personnel fulfill the critical role of fact finder when resolving the Graham inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying Graham inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness. MPEP § 2141.

The Examiner, in this case, has NOT clearly stated how an utterance, spoken many times (as in Walker) is comparable to a script which is compared to prior scripts, i.e. *first and second scores*, as stated on page 14 of the specification ("*each of these recordings may be separately logged and stored for later retrieval ... a log record is created to build an expected speech list to which the voice recording will be compared*") and to the text of the corresponding voice record. The examiner is using references that should not be combined in order to distill the invention to a gist or thrust of the invention. "In the instant case, *we conclude that a person of ordinary skill in the art having common sense at the time of the invention would not have reasonably looked to*

*Walker and Rongley to solve a problem already solved by Applicant.*" Ex Parte Rinkevich et al, Appeal 20071317, decided May 29, 2007. Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)

However, purely in the interest of expediting the prosecution of the instant invention, Applicant has amended claims 1, 23, 48 and 49 to include approximately the following limitations:

A method for evaluating compliance of at least one agent working at or for a call center and/or telecommunications center reading at least one script to at least one client, the method comprising at least the following:

conducting at least one voice interaction between the at least one agent and the at least one client, wherein the at least one agent follows the at least one script;

retrieving at least one corresponding automatic speech recognition texts for automatic speech recognition analysis with an automatic speech recognition component;

evaluating the at least one voice interaction with ~~an~~ the automatic speech recognition component, having a confidence level threshold including supplying audio files in real time of least one voice interaction and/or recording the at least one voice interaction and supplying the files to the automatic speech recognition component, adapted to analyze and compare the at least one voice interaction with the at least one corresponding automatic speech recognition texts; and

determining whether the at least one agent has adequately followed, based on the confidence-level threshold relating to the automatic speech recognition component's ability to analyze and compare the at least one voice interaction with the at least one corresponding automatic speech recognition texts, the at least one script based on a plurality of first scores related to respective portions of the at least one voice interaction and based on a second score related to an overall compliance with the at least one voice interaction, wherein at least one of the first scores and the second score are different for their respective portions of the at least one voice interaction.

Support for these limitations can be found at least on p. 3, 12-15 of the instant invention. Neither Walker or Rongley, nor any of the cited art teach or suggest such limitations. Applicant traverses the rejection of claims 1, 23, 48 and 49 and each and every claim depending therefrom. As such, Applicant believes that claims 1, 23, 48 and 49 are in condition for allowance and respectfully request they be passed to allowance.

***Claim Rejections – 35 USC § 103***

The Examiner stated that claims 33-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al., (US Patent 6,567,787). The Applicant disagrees and traverses each and every independent claim and each and every claim depending therefrom based upon the arguments set forth below.

First and foremost, the Examiner cannot on page 3-4 of the present Office Action state that “Applicant argues that Walker et al. (“Walker”), do not specifically teach an automatic screen recognition component having a confidence level threshold including supplying audio files in realtime of at least one voice interaction and/or recording the at least one voice interaction and supplying the files to the automatic speech recognition component. The examiner agrees ..” Claims 48 and 49 *contain this element and therefore cannot be anticipated by Walker*. Such mistakes, *as clearly made in the analysis*, noted in both of Applicant’s previous Responses dated at least on August 27, 2008, show that the Examiner does not have a clear interpretation of Applicant’s intention or the prior art references. These are the prior art references (Walker is the same reference the Examiner has used since the *FIRST* Office Action) the Examiner has been trying to use to either obviate the invention or *trying NOW to use to state that the invention has been anticipated again, the theory which the Examiner abandoned after the FIRST Office Action*.

The Examiner states that Walker’s POS terminal may measure the number of completed transactions per period of time, the number of items purchased through the POS terminal per period of time. However, again the Examiner has distilled the invention down to gist or thrust of the invention, without looking to the invention as a whole. MPEP §2142.02. The sections cited by the Examiner Col. 9, ll. 5-6; Col. 7, ll. 46-60; Col. 5, ll 3-8, Col 7., ll. 46-60; Col. 14, l. 59- Col. 15, 17; Col. 6., ll 24-29 and Col. 9, ll 6-10) do not state one word regarding time parameters. The Examiner is completely reaching in trying to make this piece of prior art comply with Applicant’s invention. Applicant will leave the analysis to the Board of Appeals for further review. Walker DOES NOT teach comparing a plurality of duration parameters to the actual duration of ONE PARAMETER. Walker does not teach time parameters at all. In fact, Applicant has reviewed this document many times and cannot find a single mention of time

parameters as they apply to “for at least the given one of the interactions, comparing the actual duration of the given one interaction to the expected duration parameter and comparing a plurality of duration parameters to respective portions of the actual duration of the given one interaction; and dispositioning at least the given one interaction based on the comparing.” This statement falls into the category of distilling the invention to a “gist” or “thrust” of the invention and disregarding the “as a whole” requirement. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F 2d 1540, 220 USPQ 303 (Fed Cir. 1983) *cert. denied*, 469 U.S. 851 (1984). “In the instant case, we conclude that a person of ordinary skill in the art having common sense at the time of the invention would not have reasonably looked to Walker to solve a problem already solved by Applicant.” Ex Parte Rinkevich et al, Appeal 20071317, decided May 29, 2007. Distilling an invention down to the “gist” or “thrust” of an invention disregards the requirement of analyzing the subject matter “as a whole.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (Emphasis added).

Moreover, each of the sections cited by the Examiner of the prior art of Walker’s invention teaches away from Applicant’s invention. Applicant’s claims 33, 50, and 51 state “comparing the actual duration of the given one interaction to the expected duration parameter and comparing a plurality of duration parameters to respective portions of the actual duration of the given one interaction.” The statement as supplied by the Examiner as prior art to these claims teaches away from Applicant’s invention by adding in a customer survey, in fact this entire section pertains to words spoken by the customer in a customer survey, NOT the duration of the POS transaction and certainly NOT to comparing a plurality of duration parameters to respective portions of the actual duration of the given one interaction. There is no language to support this, nor is it inherent in the disclosure. It is a stretch by the Examiner to make this reference fit when it is actually teaching something entirely different from Applicant invention as a whole. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F 2d 1540, 220 USPQ 303 (Fed Cir. 1983) *cert. denied*, 469 U.S. 851 (1984). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of

*obviousness.*" (In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in KSR)  
(Emphasis added).

However, purely in the interest of expediting the prosecution of the instant invention,  
Applicant has amended claims 33, 50 and 51 to include approximately the following limitations:

obtaining data representing at least a given one of the interactions, each one of the interactions having a respective actual prior duration parameter associated therewith  
Support for such limitations can be found at least on pages 4-7 and 10-18 of the instant invention. Neither Baron nor Flitcroft, Duhon, Zoffel and Alexander nor any of the cited art teach or suggest such limitations. obtaining data representing at least one prior expected duration parameter evaluated by an automatic recognition component having a log record module that is applicable to at least the given one of the interactions;

for at least the given one of the interactions, comparing the actual duration of the given one interaction to the expected prior duration parameter and comparing a plurality of prior duration parameters to respective portions of the actual duration of the given one interaction; and

dispositioning at least the given one interaction based on the comparing.

Support for such limitations can be found at least on pages 16-18 of the instant invention. Neither Walker nor Rongley nor any of the cited art teach or suggest such limitations. For the reasons set forth above, Applicant believes the independent claims 33, 50 and 51, as well as the claims that depend from them, are in condition for allowance and respectfully requests they be passed to allowance.

Respectfully submitted,

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